

REMARKS

Claims 1-20 are pending. Claims 18-20 have been withdrawn by the Examiner as being drawn to a non-elected invention.

THE CLAIMS ARE NOT OBVIOUS

Claims 1-12 and 15-17 stand rejected under 35 U.S.C. § 103(a) as being obvious over Kahn et al. (U.S. Patent No. 4,3501,711) in view of Weisberger et al. (U.S. Patent No. 5,807,599). Claims 13 and 14 stand rejected under 35 U.S.C. § 103(a) as being obvious over Kahn et al. in view of Weisberger et al., and further in view of Fletcher (U.S. Patent No. 5,747,088). Applicant respectfully traverses the rejection.

The examiner has failed to produce a *prima facie* case of obviousness. The Examiner alleges that 1) “[i]t would have been obvious to one skilled in the art to use any device to create sites for the infusion;” 2) “[i]t would have been obvious to one skilled in the art to use any piercing device, such as the one disclosed by Weisberger et al. to create sites on the fruit for the infusing step;” 3) “[i]t would have been obvious to one skilled in the art to use any device having any varying dimensions as long as sites can be made to allow infusion;” etc. *See* Office Action, pages 3-4. None of these conclusory statements contain any rationale as to why one of ordinary skill in the art would make such modifications. This is inconsistent with the law. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. ___, 2007 WL 1237837, at 14 (2007) (obviousness “analysis should be made explicit.”).

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

MPEP 2142.

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done.

MPEP 2142. Here, by stating a conclusion without any rationale as to why it would have been desirable to do what the present inventor has done, the Examiner has failed to carry her burden to produce a *prima facie* case of obviousness.

CONCLUSION

In the event there are any questions relating to this Response or to the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that the prosecution of this application may be expedited.

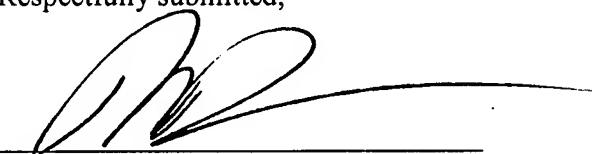
Please charge any shortage or credit any overpayment of fees to BLANK ROME LLP, Deposit Account No. 23-2185 (116825-00109). In the event that a petition for an extension of time is required to be submitted herewith and in the event that a separate petition does not accompany this response, Applicants hereby petition under 37 CFR 1.136(a) for an extension of time for as many months as are required to render this submission timely.

Any fee due is authorized above.

Respectfully submitted,

Date: 6/5/07

By:



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